

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
NORTHERN DIVISION

NO.: 2:09-CR-7-H
NO.: 2:10-CV-25-H

ANTHONY JOSEPH CUNDIFF,)	
)	
Petitioner,)	
)	
)	
v.)	
)	ORDER
)	
UNITED STATES OF AMERICA,)	
)	
Respondent.)	
)	

This matter is before the court on petitioner's request to withdraw his 28 U.S.C. § 2255 motion to vacate. Petitioner instituted these § 2255 proceedings on June 1, 2010. On June 16, 2010, petitioner submitted a voluntary motion to dismiss (in letter form) to this court.

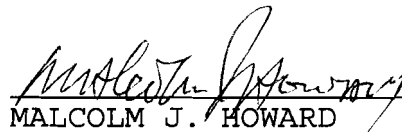
A party may voluntarily dismiss an action

without a court order by filing (i) a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment; or (ii) a stipulation of dismissal signed by all parties who have appeared.

Fed. R. Civ. P. 41(a)(1). Because the government has not filed an answer or motion for summary judgment, petitioner need not obtain a court order allowing the dismissal of his § 2255

motion. Accordingly, the court treats petitioner's request [DE #35] as a notice of voluntary dismissal pursuant to Rule 41(a)(1). The clerk is directed to close the above-captioned civil case.

This 28th day of June 2010.


MALCOLM J. HOWARD
Senior United States District Judge

At Greenville, NC
GEB